



TIB 2016 Annual Conference

2016 Small Creditor and Rural or Underserved
Updates

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Small Creditors

- I. **Who were you then? - §1026.35(b)(2)(iii)(B) and (C) - January 10, 2014 - December 31, 2015:** §1026.43 Qualified Mortgage/Ability to Repay rules establish the “Small Creditor” and “Small Creditor Balloon” Qualified Mortgages.
 - B. Creditor and affiliates have fewer than 500 first lien covered transactions; and
 - C. The creditor had less than \$2,000,000,000 (billion) in assets during the previous calendar year (adjusted annually per CPI);

II. Who are you now? §1026.35(b)(2)(iii) (B) and (C) January 1, 2016 : September 21, 2015 the CFPB finalized amendments to multiple Sections increasing limits and adjusting the asset parameters. The CFPB reaches the understanding that by providing portfolio loans where secondary or large creditor financing may not be available to the consumers, Small Creditors serve a critical function in rural and underserved areas. **January 1, 2016 -§1026.35(b)(2)(iii)(B) and (C) revised- Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act**

B. The creditor together with its affiliates have fewer than 2000 first lien covered transactions; and

C. The creditor together with its affiliates had less than \$2,000,000,000 (billion) (adjusted annually per CPI) in assets during the previous calendar year; or during one of the two previous calendar years for applications on or before April 1st

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III. §1026.35(b)(2)(iii)(B) January 1, 2016 revised: A Creditor and its affiliates have fewer than 2000 first lien covered transactions;

- A “covered transaction” is one that meets the definition set forth in 1026.43(b)(1)

Covered transaction means a consumer credit transaction that is secured by a dwelling, as defined in § [1026.2\(a\)\(19\)](#), including any real property attached to a dwelling, other than a transaction exempt from coverage under paragraph (a) of this section.

- Final rule excludes covered transactions held in portfolio by either the creditor or its affiliates. Therefore, only those first lien covered transactions which are subsequently transferred, assigned or sold are counted.

IV. §1026.35(b)(2)(iii)(C) January 1, 2016 revised: “The creditor together with its affiliates had less than \$2,000,000,000 (billion) (adjusted annually per CPI) in assets...”

- Only the assets of those affiliates which provide first lien covered transactions.

“Commentary §1026.35(b)(2)(iii)(C)-B :“The meaning of “regularly extended” is based on the number of times a person extends consumer credit for purposes of the definition of “creditor” in § 1026.2(a)(17). Because covered transactions are “transactions secured by a dwelling,” consistent with § 1026.2(a)(17)(v), **an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year.** Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, **an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker.**”

V. January 1, 2016 -§1026.35(b)(2)(iii)(C) revised: (cont.)

- Includes assets of co-owned or mutual ownership companies only if “affiliate” definition is met.

Commentary-§1026.35(b)(2)(iii)(C)- C. “If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an “affiliate,” as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company’s assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, “as set forth in the Bank Holding Company Act.” If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company’s assets toward the asset limit, regardless of the co-owner creditor’s ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner’s assets towards its own asset limit. See comment 35(b)(2)(iii)-1.ii.C for discussion of the definition of “affiliate.”

VI. January 1, 2016 -§1026.35(b)(2)(iii)(C) revised: (cont.)

- Grace period through April 1st of following year to comply. If a previously qualified “Small Creditor” fails to meet the asset or number of covered transaction thresholds as of December 31st, they may collect applications through April 1st of the following year, under “Small Creditor” parameters.

Commentary -§1026.35(b)(2)(iii)(C)-D. “A creditor satisfies the criterion in §1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.”

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Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act -§1026.35(b)(2)(iii) (B) and (C) January 1, 2016 :

(B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by § [1026.43\(b\)\(1\)](#), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person;

(C) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions, as defined by § 1026.43(b)(1), secured by first liens, together, had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see [comment 35\(b\)\(2\)\(iii\)-1.iii](#) for the applicable threshold);

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Rural or Underserved Updates 2016

I. **Who were you then? - §1026.35(b)(2)(iii)(A) January 10, 2014 – March 31, 2015: §1026.43(f) Qualified**

Mortgage/Ability to Repay rules established the “Rural Balloon” Qualified Mortgage as the only permanent option to continue balloon mortgage loans.

A. The Creditor must extend 50% or more of its covered transactions in predominantly Rural or Underserved areas during the previous 3 calendar years.

II. Previously §1026.35(b)(2)(iv)(A) and (B) January 10, 2014 – December 31, 2015: Lenders take a closer look at the definitions of rural and underserved.

- A. A “rural” county is one that during the calendar year it is neither in a metropolitan statistical area (MSA), nor in a micropolitan statistical area adjacent to an MSA. The CFPB published a list of counties deemed “safe harbor” for this purpose.

- B. An “underserved” county is one that during the calendar year if according to HMDA data for the preceding year, no more than two creditors extended covered transactions secured by first liens, five or more times in that county.

III. Who are you now? -Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act-§1026.35(b)(2)(iv)(A) January 1, 2016- March 31, 2016: Along with the Small Creditor changes, the September 21, 2015 final rules brought an expansion to the rural definition.

- A. A “**rural area**” is one that during the calendar year it is neither in a metropolitan statistical area (MSA), nor in a micropolitan statistical area adjacent to an MSA. Any census block not designated as “urban” by the latest decennial United States census. The CFPB maintains a list of areas deemed “safe harbor” for this purpose.
- The CFPB adding all areas not designated as “urban” largely increased the rural lending designated area

IV. Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act- §1026.43(e)(6) Small Creditor Balloon Qualified Mortgage January 1, 2016- March 31, 2016:

- A. The temporary Qualified Mortgage which was established by the CFPB to give Small Creditors a grace period in which to begin closing out their balloon financing programs was set to sunset January 1, 2016.
- B. Small Creditors began opting for Ability-to-Repay(ATR) only, or non-QM solutions.
- C. Final rule extended the grace period for Small Creditor Balloon Qualified Mortgages to applications taken on or before April 1, 2016.**

V. Operations in Rural Areas Under the Truth In Lending Act Interim Final Rule, signed in by Richard Cordray March 21, 2016 -§1026.35(b)(2)(iii)(A) March 31, 2016 : By removing the word “predominantly” and reducing the scope of coverage to 1 single transaction the CFPB hoped to merge the majority of the Small Creditor and Rural markets.

A. “During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, as defined by § [1026.43](#)(b)(1), secured by a first lien on a property that is located in an area that is either “rural” or “underserved,” as set forth in paragraph (b)(2)(iv) of this section”

VI. §1026.35(b)(2)(iv)(A) March 31, 2016- December 4, 2017

:The Helping Expand Lending Practices in Rural Communities Act (HELP Act) “provides the ability for a person to apply for an area to be designated by the CFPB as “rural” for the purpose of Federal consumer financial lending law”

- A. A “**rural area**” is one that during the calendar year it is neither in a metropolitan statistical area (MSA), nor in a micropolitan statistical area adjacent to an MSA. Any census block not designated as “urban” by the latest decennial United States census, or a county or census block designated by the Helping Expand Lending Practices in Rural Communities Act (to sunset Dec 4, 2017).

Closing Thoughts and Things to Remember

1. Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act-

2. Operations in Rural Areas Under the Truth In Lending Act Interim Final Rule:

- **Increased limit for number of loans for Small Creditors does not include loans held in portfolio.**
- **Asset increase includes only “affiliates” that produce first lien covered transactions.**
- **“Rural” definition change now qualifies some Small Creditors for Section 43 Rural Balloons, and brings Section 35 escrow exemption considerations.**
- **Section 32 Balloon restriction holds an exemption for Rural Balloon QM lenders.**
- **Creditors can now nominate areas to be designated as “rural”.**

Resources

- Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act-
<http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-relating-small-creditors-and-rural-or-underserved-areas-under-truth-lending-act-regulation-z/>
- Operations in Rural Areas Under the Truth In Lending Act Interim Final Rule:
<http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/operations-rural-areas-under-truth-lending-act/>
- <http://www.consumerfinance.gov/rural-or-underserved-tool/>